



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201213033**
Release Date: 3/30/2012
Date: 1/6/2012
UIL Code: 501.07-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(7). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 1, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Water front
C = Name
D = River
E = Location
F = Members
G = Name
O = State
Q = Date
R = Date
U = Date
V = Date
W = Date
X = Date
Y = Newspaper
Z = Date

UIL:

501.07-00
501-07-06

b= dollar amount
c= dollar amount
d=dollar amount
e=dollar amount

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(7). The basis for our conclusion is set forth below.

Issue: Do you qualify for exemption under section 501(c)(7) of the Code? No, for the reasons stated below.

Facts:

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

You were formed as a nonprofit corporation in the state of O on Q. Pursuant to the Certificate of Incorporation, you were formed "for any lawful non-business purpose or purposes including, but not limited to, any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, and for a professional, commercial, industrial, trade or service association. The corporation (sic) actual purpose is to operate a hunting, fishing and boating club."

Initial information submitted with the Form 1024 application indicates that you have had no past activity. It also indicates families maintained fishing cabins on B for decades and passed these cabins down from generation to generation. You are formally organizing so that the rights of these cabin owners are protected.

The families did not have title to the property. Recently, the city completed plans for a large upgrade to a sewer plant adjacent to you. The city was informed that the land on which both the sewer plant and your members' cabins occupied was owned by the state. The city therefore could not begin the upgrade until the state deeded the property to the city. Soon thereafter, the land was exchanged for acres underwater that the state desired and the construction project moved forward. You have use of one cabin and do not "own" any of the property in the B area. As of this date, ownership and value of the property is in dispute. Your members have pooled their resources to try to fight the city over ownership of this property. You have also hired an attorney.

Your membership consists of present cabin owners who believe they have property rights to the existing waterway and friends of these cabin owners. You currently have 33 members. All members meet once a month to discuss ways to improve their existing location, go over any problems they may have, and review the legal dispute with the city.

Membership dues are on an as needed basis. Your only expenses are legal fees relating to members protecting their rights of ownership of their individual cabin. The only assets held by you are the dues collected from members. Submitted invoices indicate you paid b dollars in legal fees during the period U through V. Also as of X, you had collected c dollars in revenue and spent d dollars, with the resulting balance of e dollars.

Minutes from your meeting in late 2010 state "if members do not pay up, then they are off list and there are no refunds."

In a published newspaper article dated W in the Y,

"The members of C have brought an adverse possession or "squatter's rights" law-suit (sic) against O, the city of D and the descendants of the city's original founders in an effort to officially gain ownership of land on the B."

"The collection of hunting and fishing shacks off the intersection of E besides the Waste Water Treatment Plant has sat unregulated, untaxed and relatively undisturbed for nearly a century."

"Ownership of the frequently flooded informal club has been a gray area for the city for many

years. The cabins have been handed down for decades between families and friends. The cabins are used for socializing and storing equipment and F consider the community their heritage.”

“Immediately F, who had endured attempts of municipal encroachment before, became concerned that their club would be taken out from under them now that the city apparently had clear title.”

“During Z, F’s counsel filed a petition on your behalf claiming that the members have proven to have adverse possession over the land by occupying it openly and adverse to the titleholder for so many years.”

“The C lawsuit has two parts. First, it asks the Court to find that the O Office of General services illegally deeded nearly 15 acres it did not own to the City of D. The suit further states that the C belongs to the club members and not who they believe are in fact the current title holders, the descendants of the Proprietors, the names of whom are listed in the suit despite being deceased for more than 200 years.”

Law:

Section 501(c)(7) of the Code provides for the exemption from federal income tax of clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Section 1.501(c)(7) of the Treasury Regulations provides that section 501(c)(7) of the Code applies only to clubs which are organized and (*emphasis added*) operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part (*emphasis added*) of its net earnings inures to the benefit of any private shareholder.

Revenue Ruling 69-527, 1969-2 C.B. states that a social club is not organized and operated for exempt purposes under Section 501(c)(7) if it primarily aids its members in their individual business endeavors. The ruling also states to qualify for exemption under section 501(c)(7) of the Code, an organization must be both organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes. Consequently, not only must an organization show that its members are bound together by a common objective, but that such common objective is directed towards pleasure, recreation, and other nonprofitable purposes. The term "other nonprofitable purposes" has been held to mean other purposes similar to pleasure and recreation.

In West Side Tennis Club v. Comm., 111 F.2d 6 (2d Cir. 1940), the court indicated the term “shareholder” includes the member of an organization. Furthermore, the court indicated that in order to qualify as a tax-exempt organization, an organization must be a non-profit entity.

Application of Law:

You are not described in IRC 501(c)(7) because you are not organized and operated primarily

for pleasure, recreation, and other nonprofitable purposes.

You are not described in Section 1.501(c)(7) of the Treasury Regulations because you are primarily organized and operated so members can pool their resources to litigate on their behalf as private, individual property owners. This is substantiated by the fact that you had no activity until your members' property ownership became disputed and the state subsequently deeded the property to the city.

You are like the organization in Rev. Rul. 69-527, 1969-2 C.B. 125, because your members' common objective is not toward any recreational pursuit but toward litigating on their behalf as individuals. This is evidenced by the fact that membership dues are on an as needed basis, you are pooling members' dues to fight the city and your only expense is for legal services.

You are like the organization in West Side Tennis Club v. Comm., 111 F.2d 6 (2d Cir. 1940), because you are litigating for your members as private, individual property owners. This constitutes inurement to your shareholders.

Applicant's Position

You maintain your organization qualifies for exemption under section 501(c)(7) of the Code.

Service Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that your activities primarily further or advance a purpose described in Section 501(c)(7). Because your activities of litigating on your members behalf constitutes inurement, as described in the preceding facts and analysis, you do not qualify.

Conclusion

Based on the information submitted, you are not operating for one or more purposes described in section 501(c)(7) of the Code. Your members' common objective is not toward any recreational pursuit but toward litigating on their behalf as individuals. In addition, your net earnings are inuring to your members who are considered shareholders. These findings preclude exemption under section 501(c)(7) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We have sent a copy of this letter to your legal representative, as indicated by the submitted Form 2848.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure, Publication 892